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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,855	11/15/2001	Agapios Kyriacos Agapiou	2000U055.US	6866

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EXAMINER

PASTERCZYK, JAMES W

ART UNIT PAPER NUMBER

1755

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/998,855

Applicant(s)

AGAPIOU ET AL.

Examiner

J. Pasterczyk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2002 and 25 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 9-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4 and 5</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. This Office action is in response to the IDS documents filed 6/27/02 and 9/25/02 and the telephonic restriction requirement made 8/7/02.

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, drawn to catalysts, classified in class 502, subclass 121 et al.
- II. Claims 9-18, drawn to olefin polymerization processes, classified in class 526, subclass various depending on the particular additive used.

3. The inventions are distinct, each from the other because:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product as claimed can be practiced with another materially different product, such as a solid state chromium oxide catalyst, or an unsupported catalyst without a gelling agent.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Osborne McKinney, Esq., on 8/7/02, a provisional election was made without traverse to prosecute the invention of group I, claims 1-8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

7. The specification is objected to because the status of the US applications on p. 4 of the present specification must be updated.

8. Claims 1-5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the wording "in combination, or made from a polymerization catalyst system and" leaves it unclear just what the components of the catalyst composition actually are.

In claim 2, l. 2, make "groups" singular; in l. 3 it is not clear how close something has to be to be a "derivative" of a steroid or anthryl (is it structural similarity, or that the derivative is actually made from the steroid or anthracene group?), and it is not clear what makes something of the same "type" as an amino acid "gelator", whatever "gelator" means. In addition, "organometallic compounds" is so broad as to read on alumoxanes and nearly every main group metal alkyl known as a cocatalyst for very many olefin polymerization catalysts.¹

In claim 3, l. 2, make "groups" singular.

Claim 4 has the same problems as claim 2 with regard to "derivatives" in two instances, and in l. 2 "groups" should be singular.

Claim 8 has the same problems as claim 2.

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9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 52-128985 (hereafter referred to as Chisso).

Chisso discloses the invention as claimed (see abstract provided by applicants).

11. Claims 1, 4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Takebe et al., USP 3,919,185 (hereafter referred to as Takebe).

Takebe discloses the invention as claimed (col. 3, l. 32-63).

12. Claims 1, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Funk et al., USP 5,034,481 (hereafter referred to as Funk).

Funk discloses the invention as claimed (col. 2, l. 30-58).

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Pasterczyk whose telephone number is 571-272-1375. The examiner can normally be reached on M-F from 9 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached at 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark L. Bell
Supervisory Patent Examiner
Technology Center 1700

J. Pasterczyk

3/15/04

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